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SUPREME COURT, U.S.

IN THE UNITED STATES SUPREME COURT

Case No.: 81-5280

STATE OF TENNESSEE,

vs.

ALLEN EUGENE LeMAY.

COFFEE CRIMINAL ACTION NO.: 14,646

COURT OF CRIMINAL APPEALS DOCKET NO.: 79-12-II

ORIGINAL COPY

RESPONSE TO THE MOTION TO DISMISS APPEAL
FILED BY THE STATE OF TENNESSEE

COMES NOW YOUR Appellant-Petitioner, Allen Eugene LeMay, and for Response to the Motion filed by the State of Tennessee, would show unto this Honorable Court that utilization of the term Appeal in his jurisdictional statement and in other supporting documents filed with this Court is utilized in a general sense and makes particular reference in such documents to the Code Section authorizing bringing this matter before this Honorable Court, said provision being found in 28 USCS, 1257. The State in its' Motion cited the first two portions of the above cited Section but then left off the third Section which would be applicable herein. The terminology might more artfully be utilized as Appeal by Writ of Certiorari. Counsel for the Petitioner would apologize for his utilization of the terms. The State of Tennessee has according to its rules abolished the distinction in those types of Appeal by its current Appellate Rules and all Appeals beyond the Trial Court level are "Appeals" whereas previously there was a distinction between the two. Counsel for the Petitioner because of his practice in the State Court utilized the term Appeal in the general sense, but cited the Court and opposing Counsel to the particular Code Section to which he had referenced. Quite clearly under Sub-Section Three of the Code Section there is a basis for review of the action taken by the Tennessee Courts for quite clearly there is raised in our pleading, rights, privileges and immunities claimed under the Constitution as having been violated by the Court Proceedings. So quite clearly by the Constitutional issues, a number of them, being raised in the proceedings this matter is properly before this Court. Petitioner would therefore request that the Motion of the State of Tennessee be denied.

RESPECTFULLY SUBMITTED,

ROBERT L. HUSKEY

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